



THE COUNCIL OF
ORGANIZATIONAL REPRESENTATIVES ★

November 27, 1996

Mr. William F. Caton
Office of the Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

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Federal Communications Commission
Office of Secretary

Re: In the Matter of Implementation of Section 255
of the Telecommunications Act of 1996
WT Docket No. 96-198 - NOI

Dear Mr. Caton:

Enclosed please find one original plus four copies of the Reply Comments of the Counsel of Organizational Representatives, submitted in response to the above Notice of Inquiry. Additionally, we have enclosed a diskette with these reply comments.

Please refer all correspondence regarding these comments to my attention. Thank you.

(Given to Rita McDonald)

Sincerely,

Elizabeth O'Brien /RS

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Before the
FEDERAL COMMUNICATIONS COMMISSION
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Implementation of Section 255 of the)
Telecommunications Act of 1996)
) WT Docket No. 96-198
Access to Telecommunications Services,)
Telecommunications Equipment, and)
Customer Premises Equipment)
By Persons with Disabilities)

REPLY COMMENTS OF

THE COUNCIL OF ORGANIZATIONAL REPRESENTATIVES

Respectfully submitted,

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TABLE OF CONTENTS

I. Introduction.....	1
II. The FCC Should Promulgate Regulations to Implement Section 255.....	2
III. FCC Rules Can Provide Guidance without Restraining Innovation.....	4
IV. Competitive Forces in the Marketplace have Proven Ineffective in Providing Accessibility.....	6
V. The Definition of Telecommunications Service Provider Should be Consistent with Other FCC Interpretations of Telecommunications Services.....	6
VI. There Should be Ongoing Coordination Between Industry and Consumers.....	7
VII. The FCC Should Not Exempt Foreign or Small Manufacturers.....	7
VIII. Conclusion.....	8

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REPLY COMMENTS OF

THE COUNCIL OF ORGANIZATIONAL REPRESENTATIVES

I. Introduction

The Council of Organizational Representatives (COR) submits these reply comments to the Federal Communication Commission's (FCC's or Commission's) Notice of Inquiry (NOI) regarding access to telecommunications services, telecommunications equipment, and customer premises equipment (CPE) by persons with disabilities, WT Docket No. 96-198 (released September 19, 1996). COR is a coalition of national organizations that are committed to improving the lives of individuals who are deaf or hard of hearing. Constituencies of COR organizations provide a variety of services, including technological and telecommunications services, educational programs, social and rehabilitation services, support groups and self-help programs, and general information on other services for deaf and hard of hearing consumers. Among other things, COR serves as a bridge among interested organizations, the general public,

and the community of people with disabilities on matters concerning deaf and hard of hearing individuals.¹

II. The FCC Should Promulgate Regulations to Implement Section 255.

The FCC has requested guidance on the means by which it should carry out its responsibility to enforce Section 255's requirements for telecommunications accessibility. Toward this end, the FCC seeks guidance on whether it should promulgate regulations, issue voluntary guidelines or a policy statement, or enforce Section 255 by resolving complaints on a case by case basis.

A significant number of parties who submitted initial comments on this issue noted the importance of having the Commission clarify Section 255's obligations for both industry and consumers. See Comments of Pacific Telesis at 22; National Association of the Deaf (NAD) at 6-10; Ericsson at 6; American Speech-Language-Hearing Association (ASHA). Along these lines, a number of telecommunications companies appealed to the FCC to provide them with flexible guidelines that explain the scope of Section 255 and the actions needed for proper compliance. Comments of NYNEX at 6-7; Northern Telecom at 5-6. However, many members of the telecommunications industry, while supporting policy statements or guidelines, opposed the promulgation of rules. These parties expressed the fear that rules would be too rigid and would

¹ COR's membership includes the following organizations: Alexander Graham Bell Association, American Academy of Otolaryngology - Head & Neck Surgery, American Deafness and Rehabilitation Association, American Society for Deaf Children, American Speech-Language-Hearing Association, Auditory-Verbal International, Inc., The Caption Center, Conference of Educational Administrators Serving the Deaf, Convention of American Instructors of the Deaf, League for the Hard of Hearing, National Association of the Deaf, National Captioning Institute, Registry of Interpreters for the Deaf, Self Help for Hard of Hearing People, Inc., Telecommunications for the Deaf, Inc.

consequently impede innovation by overspecifying the technological standards for accessibility.

See e.g., Comments of Siemens Business Communication Systems (Siemens) at 3; Bell Atlantic at 3.

We support the comments of the various parties to this proceeding that have urged the FCC to issue regulations for both service providers and manufacturers. See Comments of NAD; ASHA; Consumer Action Network; United Cerebral Palsy Association; American Foundation of the Blind. Were the Commission to issue only voluntary guidelines, members of the industry would remain free to ignore those guidelines at will. The consequence would be inconsistency in the application of Section 255 and continued disregard for the need to provide accessibility.

The promulgation of regulations is critical to ensuring that manufacturers and service providers fully understand their obligations to provide access throughout the design and development of their equipment and services. Without a clear mandate to this effect, companies will be likely to ignore access needs at these critical stages. Moreover, we agree with the many parties to this proceeding who explained that FCC guidance is needed to ensure that accessibility principles are incorporated into the design stages of products and services. Comments of Telecommunications Industry Association at 6; NYNEX at 7.

Some parties commenting on the NOI suggested that the Commission should rely on a case-by-case complaint process to enforce Section 255. But reliance on complaints to “fix” products and services which have already been designed without accessibility, will result in the need for extensive retrofitting. Time and again, manufacturers and service providers will argue that such retrofitting solutions are not readily achievable because of their high costs. The result will be that the FCC will be hesitant to require accessibility for those products and services, a

result which flies in the face of Congress's intent to expand telecommunications access for all Americans with disabilities.

III. FCC Rules Can Provide Guidance without Restraining Innovation

As noted, some parties expressed concerns that the promulgation of rules, as compared to guidelines, would have the unintended effect of constraining technological innovation. But the FCC's rules do not need to be overly rigid or inflexible. Rather, they can be crafted in a way to ensure that companies incorporate the concepts of universal design into their earliest stages of product and service development, and still leave wide open the manner in which access will be achieved. For example, we support the many comments that proposed requiring companies to follow certain processes during the design, development, and deployment of a product or service. NAD at 10-13; American Foundation for the Blind (AFB) at 16. Such rules would require telecommunications companies to undertake an accessibility impact analysis for their products and services. Along these lines, companies would be required to receive ongoing input from consumers with disabilities during the development of their offerings, and include such individuals in any market research and testing which they perform. Similarly, rules which will require companies to ensure the usability of their products through accessible customer support services and communications with the public (e.g. by providing TTY access as well as distributing information through alternate formats such as captioned video, diskettes, and large print) are critical to fulfilling Section 255's mandate for products and services to be accessible to and usable by individuals with disabilities.

Companies should also be required to document their efforts to incorporate access, and to make that documentation available, either through the FCC or directly to consumers. For

example, NYNEX proposes that manufacturers and service providers make available an “Annual Accessibility Statement,” which would document a company’s efforts to comply with the requirements of Section 255. Comments of NYNEX at 8. Where a company determines that accessibility is not readily achievable for products or services, it should be required to provide documentation demonstrating that it has fully researched and explored accessibility solutions and why such solutions are not readily achievable. Keeping such documentation will result in greater compliance, and will provide evidence as to whether a company has made a good faith effort to achieve access, thereby reducing complaints if a given product or service does not incorporate access.

COR agrees that FCC rules should not hinder technological innovation or stifle competition by being too rigid. However, where the need to incorporate access for specific types of disabilities or commonly used specialized customer premises equipment already exists, requirements for creating access should be put into place, with the understanding that such requirements will be reviewed periodically to keep abreast of new technologies. Thus, for example, the FCC should require telecommunications companies to ensure that all audible information, such as speech, cues, beeps, tones, or warnings, is also provided in visual formats. See Comments of NAD at 19. In addition, companies must design their products and services in a fashion that allows individuals who are deaf or hard of hearing to control the features of, and obtain communication through, those products or services without needing to hear or speak. Imposing rules such as these hardly impedes innovation; rather it encourages such innovation by challenging members of the telecommunications industry to develop creative and readily achievable accessibility solutions. Similarly, a requirement for new digital wireless technologies to

be compatible with hearing aids and TTYs does not direct manufacturers or service providers how to achieve accessibility; it simply directs them to reach this result. This is precisely what Congress intended in Section 255.

IV. Competitive Forces in the Marketplace have Proven Ineffective in Providing Accessibility

Some parties to this proceeding have commented that the FCC need not promulgate rules or guidelines because competitive forces in the marketplace will ensure that products and services are made accessible for individuals with disabilities. Comments of the Cellular Telephone Industry Association at 5; Microsoft at 2-7. But, in fact, experience has shown that time and again, the needs of individuals with disabilities have been ignored in the design of telecommunications products and services. Indeed, although (as noted by these commenters) the emphasis in other parts of the Telecommunications Act was on using competition as a means of broadening telecommunications choices, see e.g., Microsoft at 6; CTIA at 5-6, Section 255 of the Act takes a different route, specifically mandating the inclusion of access.

V. The Definition of Telecommunications Service Provider Should be Consistent with Other FCC Interpretations of Telecommunications Services.

In its NOI, the Commission sought clarification of the definition of a telecommunications provider. We support the recommendation of NAD that the Commission define this term broadly, to encompass carriers that are “engaged in providing for a fee domestic or international telecommunications directly to the public or to such classes of users as to be effectively available directly to the public.” Comments of NAD at 29, citing FCC’s First Report and Order ¶1992 on Section 251 of the Telecommunications Act . This definition will ensure that entities who may not have been providers of telecommunications services in the past, but who may provide

telecommunications services in the future (such as Internet providers) will be covered under Section 255. At the same time it will exclude other professionals who do not provide telecommunications services.

VI. There Should be Ongoing Coordination Between Industry and Consumers

Some of the parties commenting to this proceeding supported the creation of an advisory panel or coordination point from which companies could receive assistance in the development of accessible products and services. See Comments of Personal Communications Industry Association at 8-9; Siemens at 8. We support the creation of such a mechanism to ensure interaction among consumers, industry, and the Commission. A group which is formed for this purpose could assist in the ongoing development of accessibility standards and training programs, and serve as a clearinghouse to collect and distribute information on accessibility solutions. See e.g., Comments of the Information Technology Industry Council at 8. Similarly, we support those parties who commented that service providers and manufacturers should coordinate efforts to find mutually agreeable access solutions. Comments of AT&T at 11-12; Consumer Electronics Manufacturers Association at 18n.38. The convergence of services and equipment will increasingly blur the distinction between these two; coordination is necessary to ensure consistency and compatibility in their access features.

VII. The FCC Should Not Exempt Foreign or Small Manufacturers

Initial comments to the NOI uniformly urged the FCC to apply the accessibility requirements of Section 255 to foreign manufacturers. See e.g., Comments of NAD at 25-26; AFB at 7; PacificTelesis at 18n.12. We agree with this, and with comments suggesting that the United States take a leading role in ensuring uniform access on a worldwide basis. Comments of

Microsoft at 12-13. Manufacturers in other nations are already obligated to comply with existing technical, operational, and other accessibility mandates issued by the FCC. Section 255's mandates should be no different, but rather should provide a model which other nations can turn to in developing their own access requirements.

Just as there should be no exemption for foreign manufacturers, neither should there be a blanket exemption for "small" manufacturers. First, it is not clear what would constitute a "small" manufacturer, i.e., would a manufacturer with under fifty employees but considerably large resources be "small?" Section 255 is explicit in its requirement that telecommunications products and services be accessible, unless the companies providing those products and services can show that access is not readily achievable. This standard already takes into consideration a company's size and resources; it does not automatically permit the wholesale exemption of a business which is below a certain size.

VIII. Conclusion

A principal objective of the Telecommunications Act of 1996 is to ensure that all Americans have easy, affordable access to all telecommunications services, regardless of income or disability. In Section 255, Congress recognized that in the past, the failure to incorporate access features into the design of telecommunications products and services resulted in the denial of access to these products and services for individuals with disabilities. For deaf and hard of hearing individuals in particular, lack of access to telecommunications has resulted in isolation and lost opportunities in virtually all segments of our society.

Over the past several years, the FCC has demonstrated a sincere commitment - for example, through proceedings on telecommunications relay services, decoder-equipped

televisions, and requirements for hearing aid compatible telephones -- to reversing this pattern of discrimination. We urge the FCC to continue this effort, by adopting rules that fully implement Section 255's requirements for full and complete access to telecommunications equipment and services. We appreciate the opportunity to submit these comments and look forward to working with the Commission on meeting these objectives.

Respectfully submitted,

A handwritten signature in black ink that reads "Donna Sorkin" followed by a stylized monogram or initials.

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